

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. 13-01451 SC
)	
BARRY BROWN, JENNIFER BROWN,)	ORDER GRANTING IN PART AND
JANE DOE 1, and JANE DOE 2,)	DENYING IN PART MOTIONS TO
)	<u>DISMISS</u>
Plaintiffs,)	
)	
v.)	
)	
JON ALEXANDER, DEAN WILSON, ED)	
FLESHMAN, JULIE CAIN, CINDY)	
SALATNAY, COUNTY OF DEL NORTE,)	
and DONALD CROCKETT,)	
)	
Defendants.)	

I. INTRODUCTION

Now before the Court are separate but related motions to dismiss the above-captioned Plaintiffs' complaint, filed by (1) the "County Defendants," Jon Alexander, Dean Wilson, Ed Fleshman, Julie Cain, Cindy Salatnay, and the County of Del Norte, California; and (2) Donald Crockett. ECF Nos. 31 ("Crockett MTD"), 32 ("County MTD") (both filed under seal). The motions are fully briefed. ECF Nos. 41 & 42 ("Opp'ns") (both filed under seal), 44 ("County Reply"), 46 ("Crockett Reply"). As explained below, the Court GRANTS in part and DENIES in part the County Defendants' motion to

1 dismiss, and GRANTS Defendant Crockett's motion to dismiss.

2
3 **II. BACKGROUND**

4 **A. Requests for Judicial Notice**

5 All parties filed requests for judicial notice, ECF Nos. 27
6 ("County RJN"), 30 ("Crockett RJN"), though Plaintiffs' request is
7 included in their opposition to Defendant Crockett's RJN, ECF No.
8 39 ("Opp'n to RJN") (filed under seal). The Court GRANTS
9 Plaintiffs' unopposed RJN under Federal Rule of Evidence 201.

10 Plaintiffs object to the County RJN on the grounds that the
11 County Defendants do not explain why the documents -- all documents
12 from the Del Norte Superior Court's Juvenile Division -- are
13 relevant. The Court OVERRULES Plaintiffs' objection on that point,
14 but Plaintiffs are right that the Court may only take judicial
15 notice of the fact that the documents exist (not any facts alleged
16 in the documents). To that extent, the Court GRANTS the County
17 Defendants' RJN because the fact of the Superior Court's
18 proceedings and the documents' existence is not subject to
19 reasonable dispute. Further, these documents are relevant -- as
20 discussed below -- to whether the Court has jurisdiction over this
21 case.

22 Plaintiffs object to the Crockett RJN on the same grounds
23 discussed above. The Court makes the same findings: Plaintiffs'
24 objections are OVERRULED to the extent that they challenge the
25 Court's ability to take judicial notice of another court's
26 proceedings, or the filings of certain documents. The Crockett RJN
27 is GRANTED.

28 The Court does not take judicial notice of the truth of any

fact from any of the RJNs' exhibits. At the pleading stage, the Court cannot resolve or consider factual disputes outside the pleadings without converting these motions to dismiss to motions for summary judgment, which the Court declines to do. See United States v. 14.02 Acres of Land More or Less in Fresno Cnty., 547 F.3d 943, 955-56 (9th Cir. 2008) (district courts may take judicial notice of certain records, for limited purposes, and a court need not convert a motion to dismiss to a motion for summary judgment if the facts noticed are not subject to reasonable dispute). Again, the Court takes notice only of these documents' existence and the state court proceedings.

Separately, Plaintiffs suggest that all Defendants have somehow engaged in violations of Rule 26 by filing in their RJNs documents that Plaintiffs do not have. The Court finds no evidence of this. Defendants filed only documents from court proceedings in which Plaintiffs were undisputedly involved.

B. Summary of Allegations

The following facts are taken from Plaintiffs' first amended complaint, ECF No. 12 ("FAC"), and, where appropriate, the parties' RJNs. Plaintiff Jennifer Brown is the daughter of Plaintiff Barry Brown. FAC ¶ 7. Jane Does 1 and 2, born January 1, 2007, are Ms. Brown's daughters and Mr. Brown's maternal granddaughters. Id. Defendant Crockett is the father of Jane Does 1 and 2. Id. ¶ 9. He also co-owns a flower bulb farm, which is a major employer in Del Norte County, and has been a contributor to the electoral campaigns of the elected Defendants Alexander and Wilson. Id. ¶ 8. He and Ms. Brown were married from July 2007 until August 2009, when their divorce was finalized and shared custody of their

1 daughters was appointed with primary care to Ms. Brown. Id. ¶¶ 8-
2 9.

3 The County Defendants are Jon Alexander, former District
4 Attorney for Del Norte County during all relevant times; Sheriff
5 Dean Wilson; Sheriff's Detective Ed Fleshman; Del Norte County
6 Child Protective Services ("CPS") Supervisor Julie Cain; CPS Social
7 Worker Cindy Salatnay; and the County of Del Norte ("County"),
8 which operated, controlled, and maintained the Sheriff's
9 Department, CPS, and District Attorney's Office ("DAO"). Id. ¶¶ 4-
10 6.

11 The allegations in Plaintiffs' complaint arise from Ms. Brown
12 and Mr. Crockett's acrimonious divorce and Ms. Brown's contention
13 that Mr. Crockett abused and molested Jane Does 1 and 2. As it
14 must on a Rule 12(b)(6) motion to dismiss, the Court assumes the
15 truth of these allegations.

16 Plaintiffs allege that in June 2009, Jane Doe 1 told Ms. Brown
17 that Mr. Crockett had molested her. Id. ¶ 10. Ms. Brown called a
18 County sheriff and reported her daughters' complaints, after which
19 the sheriff took no action. Id. Ms. Brown took Jane Doe 1 to the
20 hospital, where hospital staff refused to perform a Sexual Assault
21 Response Team ("SART"). Id. One week later, a SART exam was
22 performed at the hospital, but no action or further investigation
23 occurred; neither Mr. Crockett nor Jane Doe 1 were interviewed; and
24 no prior complaint against Mr. Crockett was investigated. Id.

25 Plaintiffs allege that several years later, around late
26 November 2011, Jane Does 1 and 2 told Ms. Brown that Mr. Crockett
27 showed them movies of naked men and women on television. Id. ¶ 11.
28 Around December 3, 2011, Ms. Brown reported this to the County

1 sheriff's department, after which a deputy took a taped statement
2 from the daughters but allowed Mr. Crockett to pick them up for
3 visitation. Id. No further investigation occurred, and when Ms.
4 Brown asked Defendants Fleshman and Alexander, as well as other
5 county deputies and a city police officer, why no authorities had
6 taken action, she was told that her daughters' interview tape had
7 been destroyed and that showing pornography to children was not a
8 criminal offense. Id.

9 Around January 27, 2012, Jane Does 1 and 2 returned to Ms.
10 Brown's home after staying with their father for several days,
11 after which the girls appeared physically ill and disheveled. Id.

12 ¶ 12. Ms. Brown took them to the hospital, where Sutter Coast
13 Hospital Urgent Care ("SCHUC") examined them and filed a report
14 with Child Welfare Services ("CWS"), accusing Mr. Crockett of
15 medical neglect. Id. ¶ 13. Two days later, on January 29, 2012,
16 Jane Does 1 and 2 returned to the hospital, where SCHUC filed
17 another CWS report alleging that both children claimed to have been
18 sexually molested by Mr. Crockett. Id. ¶ 14. Plaintiffs allege
19 that all of the Defendants (apparently excluding Mr. Crockett) were
20 made aware of these claims but chose not to investigate them
21 because Mr. Crockett's family exerted so much political and
22 personal influence in Del Norte County. Id.

23 On January 30, 2012, Mr. Brown contacted the District Attorney
24 of neighboring Humboldt County to obtain a SART exam of Jane Does 1
25 and 2. Id. ¶ 15. Plaintiffs did so apparently because they were
26 concerned that Jane Does 1 and 2's complaints had gone ignored;
27 Defendants had not investigated any claims of abuse; and because
28 Mr. Crockett still had court-ordered visitations with his

1 daughters, which Plaintiffs worried would provide opportunities for
2 abuse. See id. Mr. Brown contacted Defendants via letter at this
3 point, and also informed Mr. Alexander by phone that he would take
4 Jane Does 1 and 2 out of Del Norte County for their safety. Id.
5 Mr. Brown communicated with Defendants -- specifically Mr.
6 Alexander, the District Attorney -- per an exception to the
7 California kidnapping statute for cases in which a person with a
8 right to custody of a child who was the victim of domestic violence
9 may take or conceal the child as a protective measure, provided
10 that the person contact the district attorney of the county where
11 the child resided. See Cal. Pen. Code § 278.7.¹ Mr. Brown then
12 took Jane Does 1 and 2 to Humboldt County. FAC ¶ 15.

13 Soon after that, on February 8, 2012, a Del Norte County
14 Magistrate Judge issued an arrest warrant for Mr. and Ms. Brown,
15 per the request of Defendants Wilson, Fleshman, and Alexander. Id.
16 ¶ 16; County RJN Ex. B ("Warrant"). According to Plaintiffs, the
17 affidavit in support of the Warrant alleged that Mr. and Ms. Brown
18 had kidnapped Jane Does 1 and 2 and that their whereabouts were
19 unknown. FAC ¶ 16. Plaintiffs contend these Defendants knew that
20 the basis for the Warrant was false at the time they presented it
21 to the magistrate, because Mr. Brown had contacted the DAO with the
22 details required per California Penal Code section 278.7's
23 exception to the kidnapping statute. See id. Nevertheless, the
24 Warrant issued and was distributed to law enforcement. Id. On
25 February 9, 2012, Mr. Brown was arrested by Defendant Fleshman, who

26
27 ¹ Plaintiffs' complaint's reference to California Penal Code
28 section 278.5 is apparently a typo. That section sets out the
kidnapping offense. Section 278.7 is the exception to section
278.5.

1 apparently agreed with Defendant Alexander at the time of the
2 arrest that no criminal charges would be filed against Mr. Brown.
3 Id. Regardless, Mr. Brown was booked, photographed, and
4 fingerprinted on felony child stealing charges, creating a felony
5 arrest record that was disseminated to various criminal background
6 databases. Id. Mr. Brown was released within hours of his arrest,
7 and no charges were filed. Id. ¶ 18. He contends that his
8 reputation as a retired peace officer and private investigator has
9 been harmed and that he has suffered financial loss as a result of
10 his arrest. Id.

11 Around March 10, 2012 -- a month after Mr. Brown's arrest --
12 Ms. Brown was arrested at her home. Id. ¶ 19. According to
13 Plaintiffs, six police officers used excessive force to subdue and
14 arrest Ms. Brown, who did not resist. Id. She was then jailed in
15 a glass holding cell for two days and mocked by Del Norte County
16 jail staff. Id. Plaintiffs also allege that Ms. Brown was denied
17 medication for various medical conditions during this time, and
18 that Defendant Alexander and County jail staff demeaned her by
19 throwing a party to celebrate her arrest. Id.

20 Plaintiffs assert that as a result of Ms. Brown's arrest, Jane
21 Does 1 and 2 were taken into CWS custody and placed in a foster
22 home. Id. ¶ 2. This foster home was apparently run by a close
23 friend of Mr. Crockett's girlfriend, who allowed Mr. Crockett
24 access to the girls even though Ms. Brown was denied visitation.
25 Id.

26 Around June 15, 2012, Defendants Cain and Salatnay removed
27 Jane Does 1 and 2 from the foster home and transferred primary
28 custody to Mr. Crockett. Id. ¶ 21. Ms. Brown was given only

1 supervised visitation, and Mr. Crockett allegedly was able to
2 approve the court-appointed monitors personally. Id. Defendant
3 Cain was one such monitor. See id. In August 2012, she attempted
4 to report one of the daughters' statements that someone they met at
5 Mr. Crockett's house was going to take them away to Mexico. Id. ¶
6 22. CWS apparently "laughed at her and refused to document the
7 report," leading Defendant Cain to report the matter to a federal
8 agency. Id.

9 On or about January 17, 2013, Arlene Kasper, a non-defendant
10 visitation monitor, reported seeing Defendant Salatnay (the
11 assigned case worker) interview Jane Does 1 and 2, who told
12 Defendant Salatnay of Mr. Crockett's history of molestations. Id.

13 ¶ 23. Plaintiffs allege that Ms. Kasper saw Defendant Salatnay
14 examine Jane Doe 1's genitals and state that "there's something
15 here." Id. Plaintiffs report that Ms. Kasper asked Defendant
16 Salatnay what she would do at that point, in response to which
17 Defendant Salatnay "said that there was nothing she could do, as
18 she had been told by her supervisor, [Defendant Cain], that no
19 matter what Jane Doe 1 or 2 said, [Defendant Salatnay] was to come
20 back with either an inconclusive or unsubstantiated report.
21 [Defendant Salatnay] said also that her hands were tied because of
22 her supervisor [Defendant Cain]." Id.

23 Later, around February 21, 2013, Jane Does 1 and 2 were again
24 taken into custody by CWS and placed into a foster home pursuant to
25 California Welfare and Institutions Code section 300, which grants
26 the juvenile court jurisdiction over children adjudged to be
27 dependents. Id. ¶ 24; Cal. Welf. & Inst. Code § 300. CWS
28 documented Jane Doe 2's January 17, 2013, report of molestation by

1 Mr. Crockett. Id. ¶ 24. CWS also stated that it would not return
2 custody of Jane Does 1 and 2 to Ms. Brown, because she had created
3 stress on the children by reporting abuse and molestation. Id.
4 Around March 5, 2013, Defendant Salatnay took Jane Does 1 and 2 to
5 Napa County, where they were interviewed for a half-hour each by a
6 male detective. Id. ¶ 25. The girls apparently refused to
7 disclose molestation or abuse allegations, so CWS (through
8 Defendants Cain and Salatnay) decided to return the girls to Mr.
9 Crockett's custody, apparently "without court authorization and in
10 spite of the fact that a [Welfare and Institutions Code section
11 300] petition hearing had been held and a subsequent jurisdictional
12 hearing set for the following week." Id. ¶ 25. The girls were
13 back in Mr. Crockett's custody around March 8, 2013. Id. ¶ 26.
14 After being denied access to the girls entirely, Ms. Brown was then
15 allowed minimal, supervised visits. Id. A week later, Defendant
16 Salatnay provided a jurisdictional report to the juvenile court in
17 which she allegedly "intentionally lied and misled the court,
18 arguing that [Jane Does 1 and 2] should be left in [Mr. Crockett's]
19 custody." Id.

20 **C. State Court Proceedings**

21 State court proceedings regarding custody, dependency, and
22 visitation are apparently ongoing in the Del Norte County Superior
23 Court. The original judge in that case, Judge Follett, awarded Mr.
24 Crockett primary custody of Jane Does 1 and 2 on January 9, 2012.
25 County RJN Ex. A. (He also issued the Warrant, discussed above, on
26 February 8, 2012.) After Judge Follett issued the Warrant, Ms.
27 Brown moved to disqualify him from the case, and on July 13, 2012,
28 the judge assigned to the disqualification motion, Judge Morrison,

1 denied it. Id. Ex. C. On February 25, 2013, the County of Del
2 Norte filed petitions for juvenile dependency on behalf of Jane
3 Does 1 and 2, per California Welfare and Institutions Code section
4 300. Id. Exs. D, E. At a February 26, 2013, the court ordered the
5 children detained. Id. Ex. F. On March 15, 2013, at a
6 jurisdictional hearing, Judge LaCasse (apparently now assigned to
7 the case) ordered the children returned to Mr. Crockett, with a
8 plan for family reunification with Ms. Brown. Id. Ex. G. On March
9 22, 2013, at a dispositional hearing, Judge LaCasse ordered all
10 visitation with the maternal grandparents to cease. Id. Ex. H. On
11 April 12, 2013, Jane Does 1 and 2 were declared dependents of the
12 state juvenile court, with an interim review hearing calendared for
13 June 28, 2013. Id. Ex. I. On April 24, 2013, Ms. Brown appealed
14 the jurisdictional order, the dispositional order, and the order
15 declaring the children dependents. Id. Ex. J. The court held an
16 interim review session on May 10, 2013. Id. Ex. L. These
17 proceedings are all apparently ongoing, though the parties refer to
18 no other actions.

19 **D. Plaintiffs' Causes of Action**

20 Based on the facts alleged above, Plaintiffs' theory is that
21 the County Defendants conspired to protect Defendant Crockett from
22 law enforcement scrutiny, thereby contributing to the infringement
23 of Plaintiffs' constitutional rights and violations of various
24 state law claims. Plaintiffs accordingly assert the following
25 causes of action against the Defendants, seeking only monetary
26 damages:

- 27 1. Conspiracy, as to Defendants Alexander, Wilson, Fleshman,
28 Cain, and Salatnay;

2. False imprisonment and false arrest, as to Defendants Alexander, Wilson, and Fleshman;
3. Defamation, as to Defendants Wilson, Fleshman, Alexander, Cain, and Salatnay;
4. Abuse of process, as to Defendants Alexander, Wilson, Fleshman, Cain, and Salatnay;
5. Intentional infliction of emotional distress ("IIED"), as to Defendants Alexander, Wilson, Fleshman, Cain, Salatnay, and Crockett;
6. Negligence, as to all Defendants;
7. Vicarious responsibility, as to County;
8. Violations of civil rights under the First, Fourth, and Fourteenth Amendments of the United States Constitution, per 28 U.S.C. §§ 1983 and 1988, as to all Defendants except Crockett; and
9. Child sex abuse and neglect, as to Defendant Crockett alone.

Defendants move to dismiss under Rules 12(b)(1) and 12(b)(6), asserting a variety of theories for dismissing or, alternatively, staying this action.² Defendant Crockett filed his own brief, discussed separately where appropriate, though on many points he joins the County Defendants' brief.

III. LEGAL STANDARD

A. Rule 12(b)(1)

When a defendant submits a motion to dismiss under Federal

² Defendant Crockett also moves for a more definite statement under Rule 12(e), but because the Court grants his motion to dismiss, his Rule 12(e) motion is denied as moot.

1 Rule of Civil Procedure 12(b)(1), the plaintiff bears the burden of
2 establishing the propriety of the court's jurisdiction. See
3 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). As a
4 court of limited jurisdiction, "[a] federal court is presumed to
5 lack jurisdiction in a particular case unless the contrary
6 affirmatively appears." Stock West, Inc. v. Confederated Tribes,
7 873 F.2d 1221, 1225 (9th Cir. 1989). A Rule 12(b)(1)
8 jurisdictional attack may be facial or factual. White v. Lee, 227
9 F.3d 1214, 1242 (9th Cir. 2000) (citation omitted). In a facial
10 attack, the defendant challenges the basis of jurisdiction as
11 alleged in the complaint; however, in a factual attack, the
12 defendant may submit, and the court may consider, extrinsic
13 evidence to address factual disputes as necessary to resolve the
14 issue of jurisdiction, and no presumption of truthfulness attaches
15 to the plaintiff's jurisdictional claims. Safe Air for Everyone v.
16 Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004); Thornhill Pub. Co. v.
17 Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979). In
18 any event, federal courts are obliged to thoroughly examine their
19 own jurisdiction. United States v. Hays, 515 U.S. 737 (1995).

20 **B. Rule 12(b)(6)**

21 A motion to dismiss under Federal Rule of Civil Procedure
22 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
23 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
24 on the lack of a cognizable legal theory or the absence of
25 sufficient facts alleged under a cognizable legal theory."
26 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
27 1988). "When there are well-pleaded factual allegations, a court
28 should assume their veracity and then determine whether they

1 plausibly give rise to an entitlement to relief." Ashcroft v.
2 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court
3 must accept as true all of the allegations contained in a complaint
4 is inapplicable to legal conclusions. Threadbare recitals of the
5 elements of a cause of action, supported by mere conclusory
6 statements, do not suffice." Id. (citing Bell Atl. Corp. v.
7 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a
8 complaint must be both "sufficiently detailed to give fair notice
9 to the opposing party of the nature of the claim so that the party
10 may effectively defend against it" and "sufficiently plausible"
11 such that "it is not unfair to require the opposing party to be
12 subjected to the expense of discovery." Starr v. Baca, 652 F.3d
13 1202, 1216 (9th Cir. 2011).

14 15 **IV. DISCUSSION**

16 **A. Younger Abstention**

17 The doctrine of Younger abstention comes from the case Younger
18 v. Harris, 401 U.S. 37 (1971). In Younger, the Supreme Court held
19 that federal courts should not intervene in ongoing state criminal
20 proceedings except under extraordinary circumstances. Id. at 43-
21 44. This is because "interference with a state judicial proceeding
22 prevents the state not only from effectuating its substantive
23 policies, but also from continuing to perform the separate function
24 of providing a forum competent to vindicate any constitutional
25 objections interposed against those policies." Huffman v. Pursue,
26 Ltd., 420 U.S. 592, 604 (1975). The Supreme Court has since
27 expanded this principle to civil matters for damages, as opposed to
28

1 injunctive relief alone,³ and developed a three-part threshold
2 inquiry into whether federal courts should abstain from interfering
3 with state court proceedings. See Middlesex Cnty. Ethics Comm. v.
4 Garden State Bar Ass'n, 457 U.S. 423, 432 (1982). The federal
5 court must ask (1) whether the state hearings at issue constitute
6 an ongoing state judicial proceeding; (2) whether the proceedings
7 implicate important state interests; and (3) whether the state
8 proceedings provide an adequate opportunity to raise constitutional
9 challenges. Id.; Gilbertson v. Albright, 381 F.3d 965, 973 (9th
10 Cir. 2004) (applying Middlesex). As a "fourth factor," if the
11 three threshold elements are satisfied, the policies behind the
12 Younger doctrine must be implicated by the actions requested of the
13 federal court. AmerisourceBergen Corp. v. Roden, 495 F.3d 1143,
14 1149 (9th Cir. 2007).

15 In some cases, federal courts have applied the Younger
16 doctrine to dismiss or stay cases implicating state court juvenile
17 or family division proceedings. For example, in H.C. v. Koppel,
18 203 F.3d 610, 613 (9th Cir. 2000), the Ninth Circuit affirmed a
19 district court's dismissal of a case that asked the district court
20 to vacate existing state court orders and enjoin future state court
21 proceedings. The Ninth Circuit held that such requests were not
22 suitable for the federal judiciary, per Younger's strong federal
23 policy against federal court interference with pending state
24 proceedings. Id. at 613-14. In Young v. Schwarzenegger, No. C-10-
25 03594-DMR, 2011 WL 175906 (N.D. Cal. Jan. 18, 2011), this Court

26
27 ³ The parties dispute whether the fact that Plaintiffs sue for
28 damages should implicate Younger, but as explained here, settled
precedent shows that suits for damages implicate stays under
Younger, but not full abstention.

1 dismissed a case on Younger grounds because the plaintiff asked the
2 Court for a declaratory judgment that certain sections of the
3 California Family Code were unconstitutional, and for injunctive
4 relief enjoining enforcement of those sections. The Court held
5 that Younger principles applied because the plaintiff was, as in
6 Koppel, directly asking the Court to interfere with ongoing state
7 proceedings in which the state had a compelling interest and there
8 were opportunities to raise federal constitutional challenges. Id.
9 at *3-4.

10 However, in Lahey v. Contra Costa County Department of
11 Children and Family Services, No. C-01-1075 MJJ, 2004 WL 2055716
12 (N.D. Cal. Sept. 2, 2004), this Court declined to apply the Younger
13 doctrine in a case that brought Section 1983 claims based on
14 constitutional violations allegedly springing from the Contra Costa
15 County Department of Children and Welfare Services' separation of
16 children from their custodial parents and placement of children in
17 foster care (among other things). Judge Jenkins found that the
18 state juvenile and family courts, being of limited jurisdiction,
19 were inappropriate fora for resolution of the plaintiffs'
20 constitutional claims. Id. at *11-12. Younger was therefore
21 inapplicable. Id.

22 Defendants argue that the Court should abstain from hearing
23 this case, or at least stay it. According to Defendants,
24 Plaintiffs' Section 1983 claim as to the First and Fourteenth
25 Amendments -- the only federal claims in this case -- counsel
26 Younger Abstention because (1) dependency, custody, and visitation
27 proceedings are ongoing in the Del Norte County Superior Court; (2)
28 child custody proceedings implicate a compelling state interest in

1 protecting children and families; and (3) Plaintiffs have an
2 adequate opportunity to present federal constitutional claims in
3 the ongoing state action. County MTD at 11-14. Accordingly,
4 Defendants ask the Court to abstain from hearing Plaintiffs'
5 Section 1983 claims as to the First and Fourteenth Amendments, and
6 to stay the entire action under the Court's inherent authority to
7 manage its cases in an orderly and efficient manner. Id. at 14-15.

8 The Court finds that Younger abstention does not apply in this
9 case. Although the state undisputedly has a strong interest in
10 matters concerning family integrity and the well-being of children,
11 see Moore v. Sims, 442 U.S. 415, 435 (1979), the Court finds that
12 the two other prongs of the three-part Middlesex test have not been
13 satisfied in this case, and the policies of the Younger doctrine
14 are not implicated.

15 First, the ongoing state proceedings are (so far as the Court
16 can tell from the parties' sparse explanations of this matter) not
17 at all related to Plaintiffs' present claims. The state
18 proceedings, apparently conducted in family and juvenile court,
19 concern custody, visitation, and dependency. See County RJN Exs.
20 A-L. Although the record on these points is not entirely clear,
21 the parties' state court disputes appear to relate exclusively to
22 those matters, and while some of Plaintiffs' federal claims relate
23 in certain ways to those proceedings, this case is profoundly
24 different. It involves different parties, completely separate
25 facts, and claims that do not implicate the state proceedings
26 themselves. See Lahey, 2004 WL 2055716, at *10 (finding
27 similarly). It is primarily a civil rights case against the County
28 Defendants for actions taken against Mr. and Ms. Brown, based on

1 the facts arising long after the family dispute in state court. As
2 pled, Plaintiffs' First and Fourteenth Amendment claims are
3 unrelated to the state proceedings. The Court is not asked to
4 resolve a challenge to those proceedings, and the factual issues
5 underpinning the Section 1983 claim do not appear to require the
6 Court to contradict or overrule the family or juvenile courts. See
7 Gilbertson, 381 F.3d at 982-83. The Court finds that the first
8 Younger prong is not met.

9 Second, any ongoing proceedings must also "provide the
10 plaintiff an adequate opportunity to litigate federal claims." San
11 Remo Hotel v. City & Cnty. of S.F., 145 F.3d 1095, 1103 (9th Cir.
12 1095). As this Court has found in a similar case, the family and
13 juvenile courts "are of limited jurisdiction and are not equipped
14 to rule on claims arising from constitutional due process
15 considerations." Lahey, 2004 WL 2055716, at *11; accord LaShawn A.
16 ex rel. Moore v. Kelly, 990 F.2d 1319, 1322-23 (D.C. Cir. 1993)
17 (holding, because the D.C. family division dealt with a limited
18 array of issues concerning child neglect and parental rights,
19 "[n]one of [the state court] proceedings is an appropriate forum .
20 . . . [T]hese proceedings are not suitable arenas in which to
21 grapple with broad issues external to the parent-child
22 relationship."). Further, unlike cases in which this Court has
23 abstained from adjudicating a plaintiff's claims relating to family
24 or juvenile court proceedings, Plaintiffs' claims now at issue do
25 not "reach to the very heart of the Juvenile Court's responsibility
26 and core competency, viz., determining the best program of services
27 and placement for each individual child." Laurie Q. v. Contra
28 Costa Cnty., 304 F. Supp. 2d 1185, 1207 n.16 (N.D. Cal. 2004).

1 This cuts against a finding that Plaintiffs would have the
2 opportunity to raise their claims in the state proceedings, even
3 assuming the first prong had been met here. While Plaintiffs could
4 indeed raise constitutional challenges to the family or juvenile
5 court's custody or visitation decisions in the state proceedings,
6 those proceedings are wholly unrelated to the core of Plaintiffs'
7 case against the County Defendants.

8 The County Defendants are correct that the Court must consider
9 only whether Plaintiffs had an "opportunity to present" federal
10 claims in the state proceedings; that the Court may not presume
11 that state courts will not safeguard federal constitutional rights;
12 and that in cases in which the other Younger prongs are met, it is
13 the plaintiff's burden to show that a procedural bar would prohibit
14 the state court from resolving a constitutional claim. County MTD
15 at 13 (citing, among other pertinent cases, Pennzoil Co. v. Texaco,
16 Inc., 481 U.S. 1, 16 (1987); Moore, 442 U.S. at 436; Dubinka v.
17 Super. Ct., 23 F.3d 218 (9th Cir. 1994)). However, the Court found
18 that the first Younger prong is not met in this case, so Plaintiffs
19 need not raise the issue of a bar, even if one existed, and even if
20 there were an opportunity to raise their federal claims below.⁴
21 See, e.g., Dubinka, 23 F.3d at 223; cf. Lahey, 2004 WL 2055716, at
22 *10.

23 Finally, as to the "fourth prong" of Younger, Plaintiffs'
24 claims relate to the County Defendants' allegedly "trumping up"
25 claims against Mr. and Ms. Brown, violating their constitutional
26

27 ⁴ Of course, if the parties later present facts that ongoing state
28 proceedings sufficiently related to this matter and allowing
plaintiffs to raise the same constitutional claims, they could file
a later motion on this point.

1 rights and those of Jane Does 1 and 2. While findings and orders
2 from the state proceedings may eventually be relevant to this case
3 -- e.g., to establish what custodial rights Mr. and Ms. Brown have,
4 vis a vis their constitutional claims, or whether any abuse or
5 neglect had actually occurred as a predicate of a constitutional or
6 state cause of action -- the Court does not find that its
7 application of those facts or resolution of Plaintiffs' claims
8 would cause the Court to interfere with any state proceedings at
9 all. Accordingly, even if the threshold prongs of Younger analysis
10 were met here, the Court does not find that resolution of
11 Plaintiffs' claims would enjoin (or have the practical effect of
12 enjoining) the state proceedings. AmerisourceBergen Corp., 495
13 F.3d at 1149 (citing Gilbertson, 381 F.3d at 978). If at some
14 point this case's resolution requires awaiting a state court
15 decision that bears on Plaintiffs' claims, and if indeed such
16 decisions are forthcoming, the parties may request a stay when it
17 is appropriate to do so.

18 A stay under Younger is therefore inappropriate, so the Court
19 proceeds to evaluate Defendants' other arguments.

20 **B. Plaintiffs' Fourth Amendment Claims**

21 Regardless of the Court's findings as to the Younger doctrine,
22 the County Defendants specifically challenge Plaintiffs' Fourth
23 Amendment claims under Section 1983. Plaintiffs Mr. and Ms. Brown
24 allege that the County Defendants deprived them of their rights to
25 "be free from unreasonable search and seizure." FAC ¶¶ 80-82. As
26 the County Defendants characterize Plaintiffs' claim -- and
27 Plaintiffs do not disagree -- the claim is premised on Defendants
28 Alexander, Wilson, and Fleshman allegedly conspiring to omit Mr.

1 Brown's statements from the Warrant affidavit, resulting in the
2 Warrant having issued without probable cause and rendering Mr. and
3 Ms. Brown's subsequent arrests violations of their Fourth Amendment
4 rights. See County MTD at 16-17; County Opp'n at 4-5. Plaintiffs
5 also claim that Ms. Brown's arrest was conducted with excessive
6 force.

7 As to Plaintiffs' claims based on the Warrant: if a person
8 knowingly or with reckless disregard for the truth includes
9 material false statements or omits material facts in an affidavit
10 submitted in support of a warrant application, he or she may be
11 liable under Section 1983 for a Fourth Amendment violation. Franks
12 v. Delaware, 438 U.S. 154, 157 (1978); Butler v. Elle, 281 F.3d
13 1014, 1024-26 (9th Cir. 2002); Cassette v. King Cnty., 625 F. Supp.
14 2d 1084, 1087 (W.D. Wash. 2008). This is called a Franks claim,
15 after the Supreme Court case. To support a Section 1983 claim on
16 this theory, a plaintiff must show that the defendant deliberately
17 or recklessly made false statements or omissions that were material
18 to the finding of probable cause. Galbraith v. County of Santa
19 Clara, 307 F.3d 1119, 1126 (9th Cir. 2002). "Omissions or
20 misstatements resulting from negligence or good faith mistakes will
21 not invalidate an affidavit which on its face establishes probable
22 cause." Ewing v. City of Stockton, 588 F.3d 1218, 1224 (9th Cir.
23 2009).

24 The County Defendants argue that Plaintiffs' Franks claim
25 should be dismissed. First, they contend that the complaint does
26 not identify the arrest warrant affiant or the allegedly
27 exculpatory evidence omitted from the probable cause statement.
28 Second, they claim that Plaintiffs' allegations of false arrest as

1 to Defendant Fleshman fail to allege that the Warrant was facially
2 invalid, and in any event, Defendant Fleshman is subject to
3 qualified immunity because of that failure to plead the Warrant's
4 facial invalidity. County MTD at 17-18.

5 Separately from their arguments on the Franks claim, the
6 County Defendants argue that Plaintiffs' allegations as to
7 excessive force in the arrest of Ms. Brown cannot support a Fourth
8 Amendment claim because none of the County Defendants are named as
9 arresting officers, and the bare assertion of "excessive force"
10 fails to meet federal pleading standards.

11 Under seal, Plaintiffs attached to their opposition brief
12 copies of Mr. Brown's letter to Defendant Alexander, as well as the
13 Warrant and the declaration of probable cause. (They did not need
14 to do so to support their claim at this stage, and the Court need
15 not take notice of their materials to find Plaintiffs' allegations
16 sufficient.) Plaintiffs contend that the complaint sufficiently
17 alleges that Defendants Alexander, Wilson, and Fleshman worked
18 together to draft the Warrant affidavit and submit it to the
19 magistrate judge, omitting from the affidavit and any other
20 statements the fact that Mr. Brown had sent the proper notice to
21 the DA's office and the County Defendants per California Penal Code
22 section 278.7. FAC ¶¶ 15-17.

23 The Court finds that Plaintiffs sufficiently plead a Fourth
24 Amendment claim. Plaintiffs allege that Defendants Alexander,
25 Wilson, and Fleshman filed an affidavit with the magistrate judge,
26 alleging that Mr. and Ms. Brown had kidnapped Jane Does 1 and 2,
27 and that their whereabouts were unknown. But according to
28 Plaintiffs, Mr. Brown gave notice to the County Defendants, per the

1 California Penal Code, that he was taking the children out of
2 jurisdiction. The County Defendants would therefore have been on
3 notice that an exception applied to Mr. and Ms. Brown taking the
4 children out of the state. Moreover, the statement in the
5 affidavit that the County Defendants had no knowledge of the
6 children's whereabouts would be plainly false, given this notice.
7 Under the circumstances, Plaintiffs have pointed to both an
8 omission and an outright falsity, both of which are material to
9 findings of probable cause because the magistrate's decision on
10 whether to grant the warrant application would plainly depend on
11 whether a kidnapping under the California Penal Code had occurred.
12 Part of this consideration would necessarily have involved whether
13 a legal exception applied.

14 The Court does not find the County Defendants' reply arguments
15 on this point persuasive. They would hold Plaintiffs' pleadings to
16 a much higher standard than the law requires. See Rutledge v.
17 Cnty. of Sonoma, No. 07-4272 CW, 2008 WL 2676578, at *7 (N.D. Cal.
18 July 1, 2008) (applying standard set out above); Galbraith v.
19 County of Santa Clara, 307 F.3d 1119, 1126 (9th Cir. 2002)
20 (heightened pleading standard does not apply to constitutional tort
21 claims). Moreover, contrary to the County Defendants' arguments,
22 the court in Rutledge dismissed a plaintiff's Franks claim against
23 a detective because the plaintiff did not identify a false
24 statement or omission in a warrant affidavit that the defendant
25 drafted -- not because the plaintiff had to plead the Franks claim
26 to a heightened standard. 2008 WL 2676578, at *7. The court in
27 that case did not require a heightened pleading standard, and in
28

1 fact could not have done so.⁵ Galbraith, 307 F.3d at 1126.

2 Further, contrary to the County Defendants' position,
3 Plaintiffs need not identify the affiant specifically because they
4 allege that Defendants Wilson, Alexander, and Fleshman worked
5 together to ensure that the relevant information was to be omitted
6 from the affidavit. According to the pleadings, each of these
7 Defendants knew of the omitted material but coordinated to ensure
8 that it did not appear in the probable cause affidavit.
9 Plaintiffs' allegations as to Section 1983 suggest that the County
10 Defendants are jointly liable for the constitutional tort.

11 As to Plaintiffs' false arrest allegations, which are
12 consonant with Plaintiffs' claims for unreasonable seizure under
13 the Fourth Amendment, the County Defendants argue that Plaintiffs'
14 allegations as to Mr. Brown's arrest fail because Defendant
15 Fleshman, who arrested Mr. Brown, has qualified immunity. County
16 MTD at 17. This contention is based on the County Defendants'
17 position that the complaint fails to allege that the Warrant is
18 invalid. As noted above, the Court does not find that to be the
19 case, though the Court addresses qualified immunity more fully
20 below.

21 As to Ms. Brown's allegations of excessive force under the
22 Fourth Amendment, FAC ¶ 19, the County Defendants argue that her
23 claim should be dismissed because none of the County Defendants are

24 ⁵ County Defendants' remaining authority to the contrary is
25 inapposite, because it concerns cases arising under different
26 standards of review or different statutes. See Olsen v. Idaho
27 Board of Medicine, 363 F.3d 916, 929 (9th Cir. 2004) (evaluating a
28 Section 1985 claim); Gilbrook v. City of Westminster, 177 F.3d 839,
856-67 (9th Cir. 1999) (evaluating a jury verdict on the
"substantial evidence" standard, not a motion to dismiss); Margolis
v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998) (affirming a district
court's grant of summary judgment).

identified as "arresting officers" and her bare assertion of "excessive force" contravenes post-Iqbal pleading standards. County MTD at 18. Plaintiffs do not join this argument in their opposition, and the Court finds Plaintiffs' allegations on this point insufficient under Rule 8. Plaintiffs provide no detail regarding how Ms. Brown's arrest was conducted with excessive force. Those allegations are bare and legally conclusory, so the Court DISMISSES them with leave to amend. Plaintiffs' allegations as to Ms. Brown's being arrested based on an unconstitutional warrant are intact, and the County Defendants' motion to dismiss Plaintiffs' Fourth Amendment Section 1983 claim on those grounds is DENIED.

C. Immunity

i. Defendant Alexander's Immunity: State and Federal

a. Federal Immunity

Separately, County Defendants argue that Defendant Alexander should be dismissed from Plaintiffs' Section 1983 claim because he "enjoys absolute immunity for decisions made within [his] prosecutorial authority." County MTD at 18 (citing Radcliffe v. Rainbow Const. Co., 254 F.3d 772, 777 (9th Cir. 2001)).

In determining immunity, the Court accepts the allegations in complaint as true. See Buckley v. Fitzsimmons, 509 U.S. 259, 261 (1993). Plaintiffs allege that Defendant Alexander worked with Defendants Wilson and Fleshman to falsify the Warrant.⁶ However,

⁶ Plaintiffs include some argument in their opposition brief that Defendant Alexander omitted the same material information to obtain a Protective Custody Warrant for Jane Does 1 and 2. Plaintiffs' FAC contains no allegations based on that warrant, and the Court does not evaluate it with respect to the County Defendants' immunity argument.

1 contrary to Plaintiffs' opposition brief, Plaintiffs do not allege
2 that Defendant Alexander was "directly responsible" for omission of
3 the material information from the affidavit (e.g., that he was the
4 affiant), only that he was closely involved with it and with Mr.
5 Brown's subsequent arrest. See FAC ¶¶ 15-17, 32. The County
6 Defendants contend that because of this lack of clarity and because
7 Defendant Alexander was not the affiant -- Defendant Fleshman was -
8 - Defendant Alexander is immune from Plaintiffs' Section 1983
9 claim. Plaintiffs contend that Defendant Alexander was acting as a
10 witness or in an investigative manner, and that he was providing
11 legal advice to police, both instances in which absolute
12 prosecutorial immunity does not apply. County Opp'n at 5.

13 A prosecutor is protected by absolute immunity from liability
14 for damages under Section 1983 "when performing the traditional
15 functions of an advocate." Kalina v. Fletcher, 522 U.S. 118, 131
16 (1997). However, "the actions of a prosecutor are not absolutely
17 immune merely because they are performed by a prosecutor."
18 Buckley, 509 at 273. Prosecutorial immunity depends on "the nature
19 of the function performed, not the identity of the actor who
20 performed it." Kalina, 522 U.S. 118 at 127 (quoting Forrester v.
21 White, 484 U.S. 219, 229 (1988)). Prosecutors are entitled to
22 qualified immunity, rather than absolute immunity, when they
23 perform administrative functions, or "investigative functions
24 normally performed by a detective or police officer." Id. at 126.
25 See also Burns v. Reed, 500 U.S. 478, 494-96 (1991).

26 To qualify as advocacy, a prosecutor's actions must be
27 "intimately associated with the judicial phase of the criminal
28 process." Imbler v. Pachtman, 424 U.S. 409, 420 (1976); see also

1 Van de Kamp v. Goldstein, 555 U.S. 335, 345 (2009) (quoting
2 Imbler); Genzler v. Longanbach, 410 F.3d 630, 637 (9th Cir. 2005)
3 (same). This can result in very broad immunity, attaching even
4 when a plaintiff's constitutional rights are violated. Genzler,
5 410 F.3d at 637. This is by design: anything less could "disserve
6 the broader public interest" in protecting a prosecutor's ability
7 to exercise independent judgment and advocate vigorously without
8 threat of retaliation by the numerous targets of a prosecutor's
9 prosecutions. Id. (quoting Imbler). "Thus, a prosecutor enjoys
10 absolute immunity from a suit alleging that he maliciously
11 initiated a prosecution, used perjured testimony at trial, or
12 suppressed material evidence at trial. Imbler, 424 U.S. at 430. A
13 prosecutor is also absolutely immune for direct participation in a
14 probable cause hearing, Burns, 500 U.S. at 491, and for preparing
15 and filing charging documents, Kalina, 522 U.S. at 130." Id.
16 However, the Supreme Court has held that absolute immunity does not
17 apply to prosecutors who fabricate evidence "during the early stage
18 of the investigation" when "police officers and assistant
19 prosecutors were performing essentially the same investigatory
20 functions," Buckley, 509 U.S. at 273, to prosecutors who provide
21 legal advice to police that probable cause exists to arrest a
22 suspect, Burns, 500 U.S. at 491, or for personally attesting to the
23 truth of evidence in support of charging documents, Kalina, 522
24 U.S. at 130.

25 There is no bright line between advocacy and police-type
26 investigative work, though the Ninth Circuit has interpreted
27 Supreme Court precedent on this issue to turn on "whether a
28 prosecutor's investigation is of the type normally done by police,

1 in which case prosecutors enjoy only qualified immunity, or whether
2 an investigation is bound up with the judicial process, thus
3 affording prosecutors the heightened protection of absolute
4 immunity." Genzler, 410 F.3d at 638. Plaintiffs have alleged that
5 Defendant Alexander assisted the County Sheriff Defendants, Wilson
6 and Fleshman, in crafting an affidavit of probable cause for the
7 Warrant, and then in conducting the arrest of Mr. Brown. Such
8 investigative work can be done in a quasi-judicial capacity, and
9 would therefore be subject to absolute immunity, when -- for
10 example -- the prosecutor does so in organizing, evaluating, and
11 marshaling evidence in preparation for trial, as opposed to when
12 the prosecutor engages in police-like activity of acquiring
13 evidence in advance of a prosecution. See Genzler, 410 F.3d at 639
14 (citing Buckley, 509 U.S. at 273; and Barbera v. Smith, 836 F.2d
15 96, 100 (2d Cir. 1987)).

16 The timing of investigative work is not dispositive in cases
17 like this one, but applying the Supreme Court's analysis, the Court
18 finds that Plaintiffs' allegations about Defendant Alexander, taken
19 as true at this stage, present him as acting in an investigative
20 capacity not related to his core advocacy function. See id.
21 Defendant Alexander is alleged to have aided in analyzing (and then
22 omitting) evidence related to a Warrant affidavit, and then to have
23 provided specific legal advice to a police officer as to the future
24 filing of criminal charges against Mr. Brown. Specifically,
25 Defendant Alexander is alleged to have been on notice of Mr.
26 Brown's letter under the California Penal Code, and to have had a
27 conversation with at least one of the Plaintiffs regarding whether
28 an exception to California's kidnapping law applied in this case.

1 So far as he incorporated these facts into his decision to work
2 with Defendants Wilson and Fleshman to submit the Warrant
3 affidavit, this work was not part of his quasi-judicial advocacy
4 role, and he is not entitled to absolute immunity for these
5 activities. Id.

6 The County Defendants contend that Defendant Alexander can
7 only lose prosecutorial immunity if the complaint alleges that he
8 was the Warrant affiant. County Reply at 6 (citing Kalina, 522
9 U.S. at 123-25). They misread Kalina. At no point does that case
10 draw such a clear line. In fact, it reinforces the Supreme Court's
11 long-standing jurisprudence that analysis of whether absolute
12 immunity attaches must be functionally based on whether the
13 prosecutor was acting as a witness (e.g., in an investigative
14 fashion) or in his capacity as an advocate. See Kalina, 522 U.S.
15 at 123-25, 129-30. In Kalina, the Supreme Court affirmed the Ninth
16 Circuit's holding that a prosecutor was not entitled to absolute
17 immunity because she had certified false facts in attesting to
18 facts recited in a "Certification for Determination of Probable
19 Cause." See id. at 130-31. The Supreme Court's analysis did not
20 hinge only on the fact that the prosecutor was also the affiant,
21 though. Rather, it was critical that the prosecutor was in that
22 case performing the function of a witness or investigator, not that
23 of an advocate. Id. at 131 (citing Imbler, 424 U.S. at 421;
24 Buckley, 509 U.S. at 273).⁷ Again, in this case, the Court finds
25

26 ⁷ The County Defendants similarly misread their other supporting
27 authority, all of which applies essentially the same framework
28 described above in cases where a prosecutor was, for example,
moving for a bench warrant. In those cases, courts have held that
the prosecutor acts in a traditional advocate's capacity because he
is applying law to facts, not acting as an investigator. See Waggy

1 that Defendant Alexander was operating in a witness or
2 investigative capacity during the relevant times. Later facts may
3 prove this false, but at the pleading stage, Plaintiffs'
4 allegations survive the County Defendants' motion to dismiss for
5 prosecutorial immunity.

6 **1. Qualified Immunity**

7 Since Defendant Alexander is not entitled to absolute
8 immunity, the Court must determine whether qualified immunity
9 attaches. Kalina, 522 U.S. 118 at 126. The doctrine of qualified
10 immunity protects government officials "from liability for civil
11 damages insofar as their conduct does not violate clearly
12 established statutory or constitutional rights of which a
13 reasonable person would have known." Harlow v. Fitzgerald, 457
14 U.S. 800, 818 (1982). Qualified immunity is "immunity from suit
15 rather than a mere defense to liability." Mitchell v. Forsyth, 472
16 U.S. 511, 526 (1985). It protects from suit all but the plainly
17 incompetent or those who knowingly violate the law. Malley v.
18 Briggs, 475 U.S. 335, 341 (1986). The relevant inquiry for a claim
19 under Section 1983 is whether (1) the facts show "the officer's
20 conduct violated a constitutional right"; and (2) the right at
21 issue was "clearly established" at the time of the officer's
22 allegedly wrongful conduct. Saucier v. Katz, 533 U.S. 194, 201
23 (2001). Trial courts may exercise discretion in deciding which
24 prong to address first. See Pearson v. Callahan, 555 U.S. 223, 236
25 (2009).

26 The Court finds that Defendant Alexander is not entitled to
27

28 v. Spokane Cnty. Wash., 594 F.3d 707, 712-13 (9th Cir. 2010). That
is not what is at stake here.

1 qualified immunity as to the Fourth Amendment claim. First,
2 Plaintiffs have sufficiently alleged violations of their Fourth
3 Amendment rights. Second, those rights were "clearly established"
4 at the time of Defendant Alexander's alleged misconduct, because
5 clearly established law would have put Defendant Alexander on
6 notice that his conduct violated the Constitution: Plaintiffs have
7 alleged a prima facie Franks claim, which is a longstanding
8 constitutional doctrine, not an undecided issue of which a district
9 attorney might reasonably have been unaware. See, e.g., Pearson,
10 555 U.S. at 244-45.

11 At this stage of litigation, the Court therefore declines to
12 dismiss Plaintiffs' Section 1983 claims against Defendant
13 Alexander.⁸

14 **b. State Immunity**

15 The County Defendants further argue that Defendants Alexander,
16 Cain, and Salatnay are immune, by state statute, to all of
17 Plaintiffs' state law claims for conspiracy, defamation, abuse of
18 process, IIED, negligence, and, additionally as to Defendant
19 Alexander alone, false imprisonment and false arrest. Id. at 21-
20 22. This argument is based on California Government Code section
21 821.6, which reads, "A public employee is not liable for injury
22 caused by his instituting or prosecuting any judicial or
23 administrative proceeding within the scope of his employment, even
24 if he acts maliciously and without probable cause." "For purposes
25 of this immunity provision, investigations are deemed to be part of
26 the judicial and administrative proceedings." Strong v. State, 201

27 ⁸ As the parties seem to agree, the only live Section 1983 claim
28 against Defendant Alexander pertains to Plaintiffs' Fourth
Amendment claims.

1 Cal. App. 4th 1439, 1461 (Cal. Ct. App. 2011); accord Blankenhorn
2 v. City of Orange, 485 F.3d 463, 488 (9th Cir. 2007). This
3 immunity has repeatedly been applied to social workers' conduct
4 during investigations. See Guzman v. Cnty. of Alameda, No. C 10-
5 2250 MEJ, 2010 WL 3702652, at *8 (N.D. Cal. Sept. 16, 2010).

6 The County Defendants contend that the alleged acts and
7 omissions of Defendants Cain and Salatnay all involve their
8 investigations of claims of abuse against Jane Does 1 and 2.
9 County MTD at 21-22. They therefore ask the Court to dismiss
10 Plaintiffs' claims for conspiracy, defamation, abuse of process,
11 IIED, and negligence claims as to Defendants Cain and Salatnay.
12 Id. They restate their other arguments as to Defendant Alexander's
13 immunity in this context. Id. Plaintiffs respond that
14 California's statutory immunity does not extend to actions
15 following social workers' "decision to make a response to an
16 allegation of child abuse." County Opp'n at 7. They contend that
17 Defendants Cain, Salatnay, and Alexander all exceeded their
18 statutory immunity grant by taking actions following their
19 investigative activities. Id.

20 The Court finds that Defendants Cain, Salatnay, and Alexander
21 are immune from Plaintiffs' state law claims per California
22 Government Code section 821.6's grant of immunity. Plaintiffs
23 contend that section 821.6 immunity does not extend to actions
24 taken after an investigation, but "California courts have not
25 embraced this distinction." See Ingram v. City of S.F. Police
26 Dep't, No. 13-0224 CW, 2013 WL 3961137, at *3 (N.D. Cal. July 29,
27 2013) (citing Scannell v. Cnty. of Riverside, 152 Cal. App. 3d 596,
28 609 (Cal. Ct. App. 1984) (dismissing tort claim against police

1 officers and county prosecutors for actions taken during and after
2 an investigation into plaintiff's conduct)). None of Plaintiffs'
3 allegations refer to actions taken outside Defendants'
4 investigative work regarding Plaintiffs. While federal immunity
5 does not attach to Defendant Alexander's investigative conduct,
6 state immunity does not appear to be so limited. See id. However,
7 it does not attach to Plaintiffs' claim for false arrest and false
8 imprisonment, which survives. Asgari v. City of L.A., 15 Cal. 4th
9 744, 753 (Cal. 1997) (statutory immunity does not apply to claims
10 for false arrest or false imprisonment per California Government
11 Code section 820.4); Cal. Gov't Code § 820.4 ("Nothing in this
12 section exonerates a public employee from liability for false
13 arrest or false imprisonment.").

14 Plaintiffs' state law claims against Defendants Alexander,
15 Cain, and Salatnay are DISMISSED with prejudice, except as to
16 Plaintiffs' false arrest claim against Defendant Alexander, because
17 the Court finds that amendment would be futile.

18 **D. Plaintiffs' Monell Claim Against the County of Del Norte**

19 Plaintiffs' Section 1983 claim against the County is called a
20 Monell claim, after Monell v. N.Y.C. Dep't of Social Servs., 436
21 U.S. 658, 689 (1978). Monell claims must be based on actions
22 pursuant to official municipal policy that caused a constitutional
23 violation. Id. To state a Monell claim for municipal liability
24 under Section 1983, a plaintiff must allege (1) possession of a
25 constitutional right of which she was deprived; (2) the existence
26 of a municipal policy; (3) that the policy "amounts to deliberate
27 indifference to the plaintiff's constitutional right"; and (4) that
28 the policy was the "moving force" behind the constitutional

1 violation. Miranda v. City of Cornelius, 429 F.3d 858, 868 (9th
2 Cir. 2005). The County Defendants argue that because Plaintiffs do
3 not plead the existence of any basis for Monell liability. County
4 MTD at 19-20. Plaintiffs concede that they have not alleged such,
5 requesting leave to amend to correct this deficiency. County Opp'n
6 at 6. Accordingly, the Court DISMISSES this claim with leave to
7 amend.

8 **E. State Law Conspiracy⁹**

9 The County Defendants argue that the Court should dismiss
10 Plaintiffs' cause of action for conspiracy against the County
11 Defendants because (1) a conspiracy cannot be alleged as a tort
12 separate from the underlying wrong it is organized to achieve, and
13 (2) the intra-corporate conspiracy doctrine precludes a cause of
14 action for civil conspiracy between employees of a corporation or
15 municipality when the defendants are acting within the course and
16 scope of their employment. County MTD at 20-21. It does not
17 matter that some of the alleged co-conspirators are entitled to
18 legislative immunity in this case: "it is possible for one
19 defendant to be immune from liability, and yet another defendant to
20 be liable for conspiring with the immune party." Rabkin v. Dean,
21 856 F. Supp. 543, 551 (N.D. Cal. 1994) (citing Dennis v. Sparks,
22 449 U.S. 24, 27 (1980)). The County Defendants make no further
23 arguments as to the applicability of any of Plaintiffs' state law
24 claims to Defendants Wilson or Fleshman. Plaintiffs dispute the
25

26 _____
27 ⁹ The County Defendants also argue that the Court should decline to
28 hear Plaintiffs' state law claims under supplemental jurisdiction
if the federal claims are dismissed. Since the Court did not
dismiss Plaintiffs' federal claims, it declines to evaluate
supplemental jurisdiction as to the County Defendants.

1 County Defendants' first argument against their conspiracy claim,
2 but do not join the second.

3 Addressing the latter argument first, the Court clarifies for
4 the parties that the cause of action at issue here is a state law
5 conspiracy claim, not a claim under 42 U.S.C. § 1985, the federal
6 statute that specifically concerns conspiracies to violate
7 constitutional rights. Plaintiffs assert that Defendants
8 Alexander, Wilson, Fleshman, Cain, and Salatnay conspired to
9 prevent investigation into Defendant Crockett and to trump up
10 charges against Plaintiffs Mr. and Ms. Brown -- essentially the
11 same facts that support Plaintiffs' Section 1983 claim, but couched
12 in a somewhat different way. Defendants' argument based on the
13 intra-corporate conspiracy doctrine contends that employees of a
14 corporation or municipality cannot be held to have conspired when
15 they were acting within the course and scope of their employment.

16 The intra-corporate conspiracy doctrine, derived originally
17 from antitrust law but now applied to many types of conspiracy
18 actions, "generally provides that employees acting within the scope
19 of their employment cannot be deemed culpable for conspiring with
20 one another or with the entity that employs them." Rashdan v.
21 Geissberger, No. 10-00634 SBA, 2011 WL 197957, at *6 (N.D. Cal.
22 Jan. 14, 2011) (citing cases). The Ninth Circuit has noted that
23 there is a split of circuit court authority regarding whether the
24 intra-corporate conspiracy doctrine applies to civil rights claims
25 under Section 1985. See Portman v. Cnty. of Santa Clara, 995 F.2d
26 898, 910 (9th Cir. 1993). Some courts within the Ninth Circuit
27 have declined to find that the doctrine precludes civil conspiracy
28 claims in civil rights cases like this one. See Ibarra v. City of

1 Watsonville, No. 12-cv-02271-EJD, 2013 WL 623045, at *8 (N.D. Cal.
2 Feb. 15, 2013); Rivers v. Cnty. of Marin, No. C-09-1614 EMC, 2010
3 WL 145094, at *7-8 (N.D. Cal. Jan. 8, 2010). But others have held
4 that it applies. See Rashdan, 2011 WL 197957, at *6. The Court
5 agrees with the more cautious holding and declines to extend the
6 scope of the doctrine.

7 The Court also finds the County Defendants' first argument
8 unavailing. The County Defendants are correct that conspiracy
9 alone is indeed not a cause of action but a legal doctrine for
10 imposing liability. Applied Equip. Corp. v. Litton Saudi Arabia
11 Ltd., 7 Cal. 4th 503, 510-11 (Cal. 1994). However, a claim for
12 civil conspiracy can rest on the commission of an actual tort. Id.
13 at 511. Since Plaintiffs have sufficiently alleged that (1) the
14 County Defendants formed and operated a conspiracy, (2) committed
15 wrongful acts or torts (e.g., false arrest and abuse of process)
16 pursuant to the conspiracy, and (3) damaged Plaintiffs in doing so,
17 Cnty. of Marin v. Deloitte Consulting LLP, 836 F. Supp. 2d 1030,
18 1045 (N.D. Cal. 2011), Plaintiffs' conspiracy claim cannot be
19 dismissed at this stage. However, per above, Defendants Alexander,
20 Cain, and Salatnay are subject to state immunity to this claim, so
21 -- subject to amendment -- it survives only as to Defendants Wilson
22 and Fleshman.

23 **F. Plaintiffs' Claims Against Crockett**

24 Plaintiffs assert only three claims against Defendant
25 Crockett: IIED, negligence, and child sex abuse and neglect.
26 Plaintiffs concede that they should have asserted negligence only
27 against the County Defendants. Crockett Opp'n at 3. That claim is
28 accordingly DISMISSED as to Defendant Crockett. If Plaintiffs

1 choose to file a second amended complaint, the new pleadings should
2 reflect that dismissal. The Court therefore addresses only
3 Defendant Crockett's motion to dismiss the IIED and child sex abuse
4 and neglect claims, both of which are state law claims. Plaintiffs
5 assert no federal causes of action against Defendant Crockett.

6 Defendant Crockett moves for dismissal of the child sex abuse
7 and neglect claim for lack of jurisdiction under Rule 12(b)(1). He
8 argues that the Court should decline to take supplemental
9 jurisdiction over the claim because the state law aspect of it
10 substantially predominates over the Section 1983 claim over which
11 the Court has original jurisdiction.

12 The question here is whether supplemental jurisdiction
13 applies. Title 28, Section 1367 of the United States Code provides
14 that, subject to two exceptions, "in any civil action of which the
15 district courts have original jurisdiction, the district courts
16 shall have supplemental jurisdiction over all other claims that are
17 so related to claims in the action within such original
18 jurisdiction that they form part of the same case or controversy
19 under Article III of the United States Constitution." The relevant
20 exception appears in Section 1367(c)(2): "The district courts may
21 decline to exercise supplemental jurisdiction over a claim under
22 subsection (a) if . . . the claim substantially predominates over
23 the claim or claims over which the district court has original
24 jurisdiction." Supplemental jurisdiction is discretionary, and "a
25 federal court should consider and weigh . . . the values of
26 judicial economy, convenience, fairness, and comity." City of
27 Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 173 (1997)
28 (internal citations omitted).

1 The Court finds that Plaintiffs' claims against Defendant
2 Crockett substantially predominate over the federal claims they
3 raise against the County Defendants. Plaintiffs' complaint
4 concerns primarily what they allege to have been gross misconduct
5 on the part of the County Defendants. The Court's jurisdiction
6 here depends on its original jurisdiction over Plaintiffs' Section
7 1983 claims. Plaintiffs' allegations against Defendant Crockett
8 are related to these claims, but they are exclusively state causes
9 of action connected to underlying allegations of abuse that do not
10 form the same case or controversy as Plaintiffs' claims over which
11 the Court has original jurisdiction.

12 Further, the Court finds that declining jurisdiction over
13 Plaintiffs' abuse claims better serves the values of judicial
14 economy, convenience, fairness, and comity in this case, since
15 Plaintiffs' claims against Defendant Crockett are based on
16 different facts and raise different issues than Plaintiffs' claims
17 against the County Defendants. Plaintiffs' ninth cause of action,
18 for child sex abuse and neglect, is therefore DISMISSED with
19 prejudice.

20 Defendant Crockett did not move to dismiss Plaintiffs' IIED
21 claim against him on the same basis, but federal district courts
22 with the power to hear state law claims have discretion to keep or
23 decline those claims under the conditions set out in 28 U.S.C. §
24 1367(c). United Mine Workers v. Gibbs, 383 U.S. 715, 725-26
25 (1966); Acri v. Varian Assocs., Inc., 114 F.3d 999, 1000 (9th Cir.
26 1997). The Court declines jurisdiction over Plaintiffs' IIED claim
27 for the same reasons stated above, though in any event, the Court
28 does not find that Plaintiffs' allegations on this claim are

1 plausible. Plaintiffs' IIED claim against Defendant Crockett is
2 DISMISSED with prejudice.

3
4 **V. CONCLUSION**

5 As explained above, the Court GRANTS in part and DENIES in
6 part Jon Alexander, Dean Wilson, Ed Fleshman, Julie Cain,
7 Cindy Salatnay, and the County of Del Norte, California's (the
8 "County Defendants") motion to dismiss. The Court GRANTS
9 Defendant Donald Crockett's motion to dismiss. Specifically,
10 the Court orders:

- 11 • Plaintiffs' Section 1983 claim based on excessive force
12 under the Fourth Amendment is DISMISSED with leave to
13 amend;
- 14 • Plaintiffs' remaining state law claims against Defendants
15 Alexander, Cain, and Salatnay are DISMISSED with
16 prejudice, except as to Plaintiffs' false arrest and
17 false imprisonment claim as to Defendant Alexander, which
18 remains undisturbed;
- 19 • Plaintiffs' state law claims against Defendants Wilson
20 and Fleshman remain undisturbed;
- 21 • Plaintiffs' Section 1983 claim against the County of Del
22 Norte is DISMISSED with leave to amend;
- 23 • Plaintiffs' complaint is DISMISSED with prejudice as to
24 Defendant Crockett.

25 All of Plaintiffs' other claims remain undisturbed.

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1 Plaintiffs have thirty (30) days to file an amended complaint.
2 If they do not do so, the Court may dismiss Plaintiffs' deficient
3 claims with prejudice.

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5 IT IS SO ORDERED.

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7 Dated: December 13, 2013



8 UNITED STATES DISTRICT JUDGE
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